



SOUTHERN EDUCATIONAL STRATEGIES, LLC
262 GERMAN OAK DRIVE, SUITE A
MEMPHIS, TENNESSEE 38018

Mayor Sharon Goldsworthy
City of Germantown
1930 Germantown Road South
Germantown, Tennessee 38138

**RE: Consultant Scope of Services Agreement for a
Municipal School District Feasibility Study**

Dear Mayor Goldsworthy:

Enclosed please find two copies of a Consultant Scope of Services Agreement from Southern Educational Strategies, LLC to provide a Feasibility Study regarding the potential creation of a Tennessee public municipal school district to serve the City of Germantown, Tennessee.

The founding partners and associates of Southern Educational Strategies, LLC appreciate the opportunity to submit this proposal for consideration by the Mayor and Board of Aldermen of the City of Germantown.

Sincerely,

A handwritten signature in black ink that reads "Tim Fite".

Tim Fite, Ed.D., President

Southern Educational Strategies, LLC

✓CC: Patrick Lawton, Germantown City Administrator

CONSULTING SERVICES AGREEMENT

THIS CONSULTING SERVICES AGREEMENT (herein "Agreement") is made and entered into this 29th day of August, 2011 by and between the CITY OF GERMANTOWN, TENNESSEE, a Tennessee municipal corporation, (herein the "CITY") and Southern Educational Strategies, LLC, a Tennessee limited liability corporation (herein the "CONSULTANT").

WITNESSETH:

WHEREAS, the CITY desires to retain a competent consultant to render services in connection with the proposal described in Exhibit A,

WHEREAS, the CONSULTANT has the requisite experience, abilities and resources to perform and/or furnish the foregoing;

WHEREAS, the CONSULTANT has submitted a proposal for the aforesaid work dated August 29, 2011 attached hereto and made a part hereof as Exhibit A (herein the "Proposal"); and

WHEREAS, the CONSULTANT desires to enter into this Agreement as an independent contractor and is ready, willing and able to provide the services in accordance with the terms of and subject to the conditions in this Agreement.

NOW, THEREFORE, for good and valuable consideration, received or to be received, the sufficiency of which the parties acknowledge, the parties agree as follows:

1.00 SCOPE OF AGREEMENT

The CONSULTANT shall perform those services as specified in the Proposal which is attached hereto as Exhibit A and incorporated by reference herein. The CITY shall pay the CONSULTANT in accordance with the terms of the Proposal. Unless otherwise specified herein, the CONSULTANT is to furnish all materials, manpower, and consumables necessary to complete the Project. The CONSULTANT agrees to attend conferences and meetings related to the Project to be held at the request of the CITY and as specified in Exhibit A.

2.00 ADDITIONAL SERVICES

In the event the CITY requests that the CONSULTANT perform additional services and/or furnish additional products not covered by this Agreement, the CONSULTANT shall perform such additional services after the CITY and the CONSULTANT enter into an equitable agreement regarding the additional services and/or products, as described in Exhibit A.

3.00 NOTICE TO PROCEED

The CONSULTANT shall commence to perform and/or furnish the consulting services called for under this Agreement upon the written Notice to Proceed issued by the CITY as described in Exhibit A.

4.00 CONSULTANT'S PERSONNEL

The CONSULTANT certifies that it presently employs, and/or will contract with adequate qualified personnel or subconsultants for the duration of the performance of the services contemplated under this Agreement.

5.00 CONFLICT OF INTEREST

The CONSULTANT declares that neither the Mayor, nor any Aldermen, nor any other CITY official or employee holds a direct or indirect interest in this Agreement. The CONSULTANT pledges that it will notify the CITY in writing should any CITY official become either directly or indirectly interested in this Agreement. The CONSULTANT declares that as of the date of this declaration that it has not given or donated or promised to give or donate, either directly or indirectly, to any official or employee of the CITY, or to pay anyone else for the benefit of any official or employee of the CITY any sum of money or other thing of value for aid or assistance in obtaining this Agreement. The CONSULTANT further pledges that neither it nor any of its owners, officers or employees will give or donate or promise to give or donate, directly or indirectly, to any official or employee of the CITY or anyone else for the benefit thereof any sum of money or other thing of value for aid or assistance in obtaining any change order to this Agreement.

6.00 CONSULTANT'S ASSISTANCE WITH PROJECT COST

In the event that the proposal received by the CITY is greater than the CITY'S budget for the Project, the CONSULTANT agrees to work with the CITY, without additional compensation to the CONSULTANT, (i) to consider all alternatives available to reduce the anticipated cost of the Project.

7.00 COMPLIANCE WITH LAWS

The CONSULTANT agrees to observe and to comply at all times with all applicable Federal, State, and local laws, ordinances, and regulations in any manner affecting the provision of the services for the Project and to comply with all instructions and orders issued by the CITY regarding the Project.

8.00 TERMINATION

Upon thirty (30) days written notice, with or without cause, the CITY may terminate this Agreement. Following such termination, the CITY and the CONSULTANT shall agree upon an amount of payment for all services properly performed or furnished prior to the effective date of termination as set forth in Exhibit A.

9.00 SERVICES

All services provided by CONSULTANT for this Project shall: (i) conform to all applicable standards of care and practice in effect at the time the service is performed; (ii) be of the highest quality; and (iii) be free from all faults, defects or errors. Throughout the Project, the CONSULTANT shall request and the CITY shall provide conferences to assure that the

CONSULTANT'S work is being done in a satisfactory manner and in accordance with the desires of the CITY. It is understood that time is of the essence in the performance and completion of the CONSULTANT'S work. It is agreed that no extension of time will be valid without the CITY'S prior written consent and no such consent should be assumed.

Without limiting the CITY'S rights or remedies for the CONSULTANT'S default or delay, the CITY may withhold payment or decline to make payment to the CONSULTANT of all or any portion of the CONSULTANT'S fee or reimbursable expense whenever, in the CITY'S absolute discretion, the CONSULTANT'S work is defective or inadequate, or reasonable evidence exists that the CONSULTANT'S work will not be completed within the time schedule set forth in this Agreement, or the CONSULTANT has otherwise failed or refused to comply with its obligations to the CITY.

10.00 REIMBURSEMENT FOR EXPENSES

The CONSULTANT shall be reimbursed reasonable expenses which are authorized in writing by the CITY before the CONSULTANT incurs any such expenses.

11.00 CLAIMS, LIABILITY AND INDEMNITY

The CONSULTANT shall assume all risk in connection with the performance of this Agreement, and shall be liable for any damages to persons or property resulting from the negligent or willful acts, errors or omissions of the CONSULTANT, its agents, servants, and/or employees in connection with the prosecution and completion of the work covered by this Agreement. The CONSULTANT agrees that it will indemnify and hold the CITY and its employees harmless from all claims of any type and for any expenses and costs, including attorney's fees and court costs which may be incurred by the CITY, arising from the negligent or willful acts, errors, or omissions of the CONSULTANT, its agents, servants and/or employees in the performance of this Agreement, and the CONSULTANT will carry sufficient general liability insurance to provide the above indemnification. The indemnities set forth herein shall survive the expiration or termination of this Agreement.

12.00 ATTORNEY'S FEES

If any legal action or other proceeding is brought for the enforcement of this Agreement or because of any alleged dispute, breach, default, or misrepresentation in connection with any provisions of the Agreement and the CITY is successful therein, the CITY shall be entitled to recover from the CONSULTANT reasonable attorney's fees, court costs and all expenses even if not taxable or assessable as court costs (including, without limitation, all such fees, costs and expenses incident to appeal) incurred in that action or proceeding in addition to any other relief to which the CITY may be entitled.

13.00 EQUAL EMPLOYMENT OPPORTUNITY

13.01. Non-discrimination. In carrying out the work under this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin or sex. The CONSULTANT shall take affirmative action to ensure that applicants are employed, and that employees are treated during

employment, without regard to their race, creed, color, national origin or sex. Such action shall include, but not be limited to, the following: employing; upgrading; demoting; transferring; recruiting or paying recruitment compensation; and selecting for training, including apprenticeships.

13.02. Posting and Advertising. The CONSULTANT agrees to post in conspicuous spaces available to employees and applicants for employment a notice, setting forth the provisions of the non-discrimination clause contained in Paragraph 13.01 hereinabove. The CONSULTANT shall, in all solicitations or advertisements for employees placed by, or on behalf of, the CONSULTANT, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, national origin or sex. The CONSULTANT shall incorporate the foregoing requirements of this Paragraph 13.02 in all subcontracts, if any, for services covered by this Agreement.

14.00 TRANSFER, ASSIGNMENT OR SUBLETTING

This Agreement shall not be transferred or assigned or sublet without prior written consent of the CITY.

15.00 FAMILIARITY WITH THE AGREEMENT ITEMS

The CONSULTANT, by executing this Agreement, acknowledges full understanding of the extent and character of the services required and the conditions surrounding the provision thereof. The CITY will not be responsible for any alleged misunderstanding of the services to be furnished or completed, or any misunderstanding of conditions surrounding the performance thereof. It is understood that the execution of this Agreement by the CONSULTANT serves as the CONSULTANT'S stated commitment to fulfill all the conditions referred to in this Agreement.

16.00 ENTIRE AGREEMENT

This Agreement and all exhibits hereto constitute the entire agreement and understanding between the parties relating to the subject matter herein and shall not be modified, altered, changed or amended unless in writing and signed on behalf of the parties. Each and every modification and amendment of this Agreement must be in writing and signed by all of the parties hereto. Each and every waiver of any covenant, representation, warranty, or other provision of this Agreement must be in writing and signed by each party whose interest is adversely affected by such waiver. No waiver granted in any one instance shall be construed as a continuing waiver applicable in any other instance.

17.00 CONTRACTING AUTHORITY

The persons executing this Agreement on behalf of the CITY and the CONSULTANT hereby personally represent and warrant to all other parties that they have been duly authorized to execute and deliver this Agreement.

18.00 GOVERNING LAW

This Agreement is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles or conflicts of law) of such state, and of the United States of America shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof. Any litigation brought with respect to this Agreement shall be brought in a court of competent jurisdiction in Shelby County, Tennessee and the CONSULTANT hereby consents to the jurisdiction of such courts.

19.00 OPPORTUNITY FOR REVIEW

Each party has received and had the opportunity to review this Agreement, and each party has had the opportunity, whether exercised or not, to have each respective party's attorneys review this Agreement; and, accordingly, the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.

20.00 SECTION HEADINGS

The section headings contained in this Agreement are for convenience of reference purposes only and are not intended to qualify the meaning of any section and shall not affect the interpretation of this Agreement.

21.00 NOTICES

All notices, demands, and requests required or permitted by this Agreement shall be in writing and shall be sent by facsimile transmission, air or other courier, or hand delivery as follows:

- (i) To: City of Germantown
1930 South Germantown Road
Germantown, TN 38138
Facsimile: (901) 757-7258

- (ii) To: Dr. Tim Fite
Southern Educational Strategies, LLC
262 German Oak Drive, Suite A
Memphis, Tennessee 38018
Facsimile: (901) 754-8524

Any notice, demand, or request sent by facsimile transmission shall be deemed given for all purposes under this Agreement when properly transmitted by telecommunication device. Any notice, demand, or request which is hand delivered or sent by air or other courier shall be deemed given for all purposes under this Agreement when received.

Any party to this Agreement may change such party's address and/or telecopier number for the purpose of notices, demands and requests required or permitted under this Agreement by

providing written notice of such change of address to all of the parties, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

22.00 SEVERABILITY

If any provision of this Agreement is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such unlawful, invalid, or unenforceable provision were not contained herein by its severance herefrom. In addition, in lieu of such unlawful, invalid or unenforceable provision, there shall be added automatically as a part hereof a provision as similar in terms to such unlawful, invalid, or unenforceable provisions as may be possible and may be lawful, valid or enforceable. Furthermore, if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

23.00 NO CONSENT TO BREACH

No consent or waiver, express or implied, by any party to this Agreement to or of any breach or default by the other party to this Agreement in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default of the same or any other obligations hereunder. Failure on the part of any party to this Agreement to complain of any act or failure to act of any other party to this Agreement, or to declare such party in default, irrespective of how long such failure continues, shall not constitute a waiver by the non-defaulting party of its rights hereunder.

24. AGREEMENT CONTROLLING

To the extent that any provision hereof is inconsistent with a provision contained in the Proposal, the provision contained herein shall govern. However, as regards to Scope of Services, the provisions of Exhibit A approved by the City shall prevail over any other agreement.

[Signatures on next page]

WITNESS THE DUE EXECUTION HEREOF.

**CITY OF GERMANTOWN,
TENNESSEE**

By: _____
Sharon Goldsworthy, Mayor

ATTEST:

By: _____
City Clerk/Recorder

APPROVED AS TO FORM AND
CONTENT:

City Attorney

**SOUTHERN EDUCATIONAL
STRATEGIES, LLC**

By: Tim Fite
Dr. Tim Fite, Ed.D.
President
262 German Oak Drive
Memphis, Tennessee 38018

CONSULTANT's Telephone Number:
(901) 508-2746

CONSULTANT's Facsimile Number:
(901) 754-8524

Exhibit A

I. Southern Educational Strategies, LLC (herein known as Consultant) offers its services to be engaged by the City of Germantown, Tennessee (herein known as City) as an independent contractor to perform a study regarding the feasibility of the City establishing a public Tennessee municipal school district which would afford to K-12 grade school-aged residents of the City educational opportunities, to include both scholastic and extra-curricular activities, that at a minimum are comparable to the educational opportunities provided by the public school district that currently serves the residents of the City.

II. Scope of Services

The Scope of Services to be provided by Consultant is as follows:

A. Feasibility Study

Following consultation with the Mayor and/or the Mayor's designee to determine the City's current and anticipated needs and requirements, Consultant will:

- 1) perform through sub-consultants an analysis of legal and regulatory requirements and issues that may reasonably be expected to arise should the City choose to establish a public Tennessee municipal school district;
- 2) provide an overview of the essential academic program and operational program requirements that the City could reasonably anticipate to encounter should the City choose to establish a public Tennessee municipal school district along with suggested courses of action to successfully meet those requirements;
- 3) provide the City with an analysis of the fiscal requirements, and a 2011 estimate of the total annual operational revenues and expenditures (priced at a current dollar value) that the City could reasonably expect to receive and incur should the City choose to establish a public Tennessee municipal school district.

B. Written Report

Consultant will provide a written report of its Feasibility Study to the Mayor and City Administrator of the City.

III. Consultation and Follow-Up

Following the submission of Consultant's written report of the Feasibility Study, Consultant will meet on up to three (3) occasions (or more, if mutually agreed), at a mutually agreeable time and place and for a reasonable period of time, with the Mayor, Aldermen, resident citizens and such other officials and employees of the City as the Mayor may select. The purpose of such meetings will be for the Consultant to answer such questions as attendees on behalf of the City may have regarding matters addressed in the written report of the Feasibility Study.

IV. Proprietary Nature of Written Report of the Feasibility Study

The City recognizes that Consultant is in the business of providing to its clients, including governmental entities and school systems, information and analyses such as will appear in the written report of the Feasibility Study. The City further recognizes that use of such information and analyses as will appear in the written report by entities with whom Consultant has not entered into a contractual relationship would be detrimental to Consultant's business. Therefore, the City agrees that Consultant may state in its written report of the Feasibility Study that information contained therein which is the creation and product of the intellectual efforts of Consultant and/or its sub-consultants is proprietary to Consultant and has been provided for the sole and exclusive use of the City.

V. Completion Date

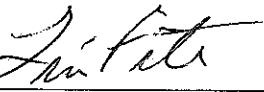
Consultant will complete the Feasibility Study and submit its written report of that Study to the City on or before January 16, 2012. The meetings described in paragraph III. above will occur following that date.

VI. Compensation

- A. A guaranteed maximum not-to-exceed fee of \$72,000.00 (hereinafter, "Fee") will be paid by the City to the Consultant for the services described herein above.
- B. An initial payment of one-third (1/3) of the Fee, or \$24,000.00, will be paid by the City to the Consultant within five (5) business days following the execution of the Consulting Services Agreement.
- C. An intermediate payment of one-third (1/3) of the Fee, or \$24,000.00, will be paid by the City to the Consultant within five (5) business days following submission of the written report of the Feasibility Study.
- D. The final payment of one-third (1/3) of the Fee, or \$24,000.00, will be paid by the City to the Consultant on or before February 16, 2012.

- E. Once paid, the initial payment of one-third (1/3) of the Fee, or \$24,000.00, described in paragraph A above is non-refundable. In the event the City terminates this Services Agreement prior to the Completion Date, compensation owed Consultant will be based upon work rendered to the date of termination as a percentage of total work involved in the Scope of Services, provided that more than one-third (1/3) of the total work has been rendered. Thus, if termination occurs at a point at which one-third (1/3) of the work or less has been performed, Contractor shall retain the full initial payment of one-third (1/3) of the Fee, or \$24,000.00. If termination occurs after more than one-third (1/3) of the work has been performed, the percentage of work that has been performed will be applied to the Fee. That percentage of the Fee less the initial one-third (1/3) payment, or \$24,000.00, will be the compensation owed Consultant. The compensation owed Consultant will be paid within five (5) business days of Consultant's submission of an invoice which will identify the percentage of work that had been performed as of the date of termination and the calculation of percentage of the Fee Consultant is owed.
- F. Should City elect to engage Consultant to provide services which are outside the Scope of Services set forth in paragraph II. above, it is agreed that Consultant will render those services on an hourly rate basis, with the hourly rate charge ranging from One Hundred Seventy-Five Dollars (\$175.00) to Two Hundred Twenty-Five Dollars (\$225.00) per Consultant, depending upon the type of consulting services requested. It is further agreed that hourly rate billing for such services will be invoiced after the end of the month in which the services are rendered, and that payment will be made to Consultant within ten (10) business days of the City's receipt of Consultant's invoice.

Submitted on August 29, 2011

By 
Dr. Tim Fite,
President, Southern Educational Strategies, LLC